

MASS. EA 24.102: M38/H/993

UMASS/AMHERST



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Commonwealth of Massachusetts

Executive Office of Environmental Affairs

GOVERNMENT DOCUMENTS
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Department of Environmental Protection

FEB 24 1997

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The 1993 Massachusetts Contingency Plan - A New Approach to Cleaning Up Disposal Sites

The Commonwealth's Waste Site Cleanup Program has been redesigned to streamline and accelerate cleanup of releases of oil and hazardous material to the environment. In July, 1992, amendments to the Massachusetts Superfund Law (M.G.L. c. 21E) requiring the redesigned program were signed into law by Governor Weld. In accordance with these amendments, the regulations for assessing and cleaning up oil and hazardous material releases (the Massachusetts Contingency Plan or "MCP", which was originally promulgated in 1988) were substantially revised on July 30, 1993. Most of the new regulations took effect on October 1, 1993.

These regulations have been developed with the assistance of an Advisory Committee composed of representatives of industry, consultants, attorneys, environmentalists, public health advocates and local officials. Committee discussions have helped design a program which balances the need for certainty and flexibility by the regulated community with the needs of all Massachusetts citizens for timely and permanent cleanups which leave no significant risk to health, safety, public welfare, and the environment.

Background

The previous Waste Site Cleanup Program and regulations relied heavily on direct DEP oversight of privately-funded assessment and cleanup actions. Over the years, concerns about the program's effectiveness and funding were raised by a wide variety of interested parties, including DEP itself. In July 1990, DEP began working with a Study Committee to develop recommendations for resolving these concerns. DEP and the Study Committee recommended a reallocation of responsibilities between the private and public sector, with:

- a strengthened and expanded private role which encourages those legally responsible for sites to conduct response actions in a timely way, and
- a focused role for DEP that concentrates limited government resources on the sites that the private sector cannot or will not handle, and on those tasks that the public sector has to perform to ensure that private sector actions are appropriate.

These recommendations formed the basis of the 1992 amendments to M.G.L. c. 21E and the 1993 Massachusetts Contingency Plan.

The Redesigned Program - The New Roadmap

The redesigned program has been described in terms of a highway, with a variety of entrance and exit points, fast and slow lanes, and signs to describe how releases will be identified and addressed with a level of DEP oversight that is appropriate for each site. The 1993 Massachusetts Contingency Plan serves as the "roadmap" for conducting assessments and cleanups. Within limits, the pace of cleanup is determined by the private sector for voluntary cleanups and by DEP for publicly funded actions. The new MCP provides "off-ramps" at any point where DEP's standards for cleanup have been met, and establishes basic performance standards (and "driving speeds") for moving through the process.

In the redesigned program, the Department will receive notification of releases and threats of release of oil and hazardous material that exceed specific thresholds. Within one year of this notification, all sites that have not yet been cleaned up must be evaluated using a quantitative ranking system, and classified in either "Tier I" or "Tier II". At Tier I sites, a permit must be obtained from the Department to conduct comprehensive response actions, and the most serious of these sites (Tier IA) will be subject to continuous agency oversight. At Tier II sites, comprehensive response actions are also required, but these can be conducted without oversight by the Waste Site Cleanup Program. At the conclusion of response activities, a Response Action Outcome Statement must be filed with the Department to document the achievement of a permanent or temporary solution.

Key Features of the New Program and MCP

- Licensed Site Professionals (LSPs)**

Reliance on Hazardous Waste Site Cleanup Professionals (also called "Licensed Site Professionals", or "LSPs"), experts in assessment and cleanup who are licensed by the Commonwealth, is a cornerstone of the new program. LSPs will be employed by people conducting response actions to oversee assessment and cleanup actions and ensure that such actions are performed in compliance with the MCP. By hiring an LSP, people conducting a response action can proceed at most sites on their own and at their own pace. LSPs coordinate response actions and render opinions that response actions meet the MCP's requirements. Throughout the new MCP, specific points in the response action process that require LSPs to provide opinions are identified. *The regulations that establish the licensing process and criteria can be found in 309 CMR 1.00 - 8.00. A list of LSPs is available from the Board of Registration of Hazardous Waste Site Cleanup Professionals (telephone: 617/292-5556).*

- Response Action Performance Standard (RAPS)**

The new MCP sets a new general performance standard for conducting response actions as well as specific performance standards for each element of the program, and allows room for professional discretion on how to meet them. The new general performance standard for assessment and remedial actions performed under Chapter 21E and the MCP is

the "Response Action Performance Standard" (RAPS). The RAPS standard is "the level of diligence" necessary to ensure that all response actions comply with the MCP, are adequate to protect public health and the environment, and apply current commonly accepted professional engineering and scientific standards and practices. *The RAPS standard can be found in the new MCP at 310 CMR 40.0190.*

- **Notification Thresholds**

For the first time, the new Massachusetts Contingency Plan clearly articulates which releases and threats of release of oil or hazardous material do and do not require reporting to the Department. It adds specific thresholds and time frames for notification of "historical releases" and "imminent hazards" to the existing criteria for reporting sudden releases and threats of release. *See Subpart C of the new MCP (310 CMR 40.0300).*

- **Risk Reduction Measures and Accelerated Cleanups**

Early risk reduction measures and accelerated assessment and remedial actions are encouraged and in some cases mandated. The need for early actions must be evaluated, and **Immediate Response Actions** are required under specific conditions (in response to sudden releases, imminent hazards, and other time-critical conditions). Other early actions, **Release Abatement Measures**, that reduce risks and lower future cleanup costs can also be conducted if those doing the cleanup want to do so. These risk reduction measures may allow complete cleanup of smaller releases without comprehensive response actions, or may improve site conditions (and lower the site's numerical ranking) at sites where longer-term cleanup is required. *See Subpart D of the new MCP (310 CMR 40.0400).*

- **Site Ranking**

Releases that have not been cleaned up within one year of notification must be scored using the **Numerical Ranking System (NRS)**. The NRS ranks sites using specific criteria and a scoring system based on the existing and potential risks posed by the site to public health, natural resources and environmental receptors. Generally, sites that score below 350 are **Tier II** sites. Assessment and cleanup actions can proceed at these sites under the oversight of an LSP and without a Waste Site Cleanup permit or approval (remedial actions may require approval(s) from other DEP programs, and from other agencies).

Sites that score 350 or above, as well as sites that are located within certain groundwater resource areas, are **Tier I** disposal sites. These sites require a 21E permit to proceed with further response actions. *See Subpart E of the new MCP (310 CMR 40.0500).*

- **Permits for Tier I Sites**

The NRS score is also used as a basis for separating Tier I sites into three categories for permitting - Tier IA, IB, and IC. In addition to the NRS score, DEP will consider factors such as the complexity of the site conditions and the compliance history of the

potentially responsible party in determining the appropriate category of Tier I permit. The most complicated and serious sites will be classified as Tier IA. Response actions at these sites will be coordinated by a Licensed Site Professional with direct oversight by DEP staff. Response actions at Tier IB and IC sites will be managed by a Licensed Site Professional, and can proceed without DEP's direct oversight. *The permit process is described in the new MCP in Subpart G (310 CMR 40.0700).*

- **Cleanup Requirements**

Chapter 21E establishes a standard for deciding when response actions are complete in terms of the risks remaining at a site: a condition of "No Significant Risk" of harm to health, safety, public welfare, or the environment must exist or be achieved at each site. This standard requires consideration of both current and reasonably foreseeable uses of a site and its surrounding area. In addition, the statute requires that a cleanup reach levels of oil and hazardous material that would exist in the absence of the disposal site if feasible.

The 1993 MCP provides three options for defining a level of "no significant risk" or "how clean is clean enough": Method 1 uses clear numeric standards for more than 100 common chemicals in soil and groundwater; Method 2 allows for some adjustments in these standards to reflect site-specific conditions; and Method 3 allows cleanup requirement goals to be defined on the basis of a site-specific risk assessment. With some limits, people conducting response actions can choose among these methods. *These methods are described in Subpart I of the new MCP (310 CMR 40.0900).*

- **Cleanup Endpoints**

The 1993 MCP establishes procedures for **Response Action Outcomes** which document that a permanent or temporary solution has been reached. Where it is not feasible to achieve a permanent solution, the MCP recognizes where a temporary solution (a major milestone indicating that risks have been reduced, but a "no significant risk" level cannot be maintained for any foreseeable period of time) can be achieved. The 1993 MCP also establishes **Activity and Use Limitations** which are deed restrictions or deed notices used to inform future property owners and users that a cleanup requires certain limits on activities at that site, unless additional response actions are conducted. *Subpart J of the new MCP describes these endpoints (310 CMR 40.1000).*

- **Ensuring Compliance**

DEP is required to audit response actions at 20% of sites in the Waste Site Cleanup Program on an annual basis. The audit program will be supported by annual compliance fees paid for all sites which have not reached a Response Action Outcome within one year of notification, and by one-time fees which cover DEP's costs of auditing some specific types of actions. *The audit program is described in Subpart K of the new MCP (310 CMR 40.1100).*

- **Public Information and Involvement**

The MCP's public involvement requirements have been revised to establish that the party conducting the response action is now also responsible for conducting public involvement activities (e.g., preparing and implementing a public involvement plan if one is requested). It also clarifies when local officials must be notified and when legal notices must be published to provide information about the status of response actions. *Public involvement provisions can be found in Subpart N of the new MCP (310 CMR 40.1400).*

- **Transition Provisions for Sites under the previous MCP**

The regulations establish rules for getting the 5,000+ sites and "locations to be investigated" that were reported to DEP under the former waste site cleanup program into the appropriate boxes in the new program. The transition provisions honor existing approvals (e.g., waivers), and provide opportunities to those legally responsible to use the new reporting thresholds and cleanup standards to determine the best approach. The transition provisions also set deadlines for those responsible for cleanups to tell DEP how they will proceed. *See Subpart F of the new MCP (310 CMR 40.0600).*

- **Adequately Regulated Sites**

Those responsible for sites that are regulated both by Chapter 21E and another state or federal environmental program may no longer have to conduct response actions in two separate regulatory universes under the new MCP. These regulations contain specific provisions for deferring application of all or part of the MCP at sites that are "adequately regulated" by another set of regulations. Specific provisions are included for sites regulated by the federal Superfund program, and DEP's programs for management of hazardous and solid wastes. *These requirements are described in the 1993 MCP (see 310 CMR 40.0110).*

- **Fees**

To ensure that the redesigned Waste Site Cleanup Program works as intended, and can keep pace with private sector responses, DEP must be able to review permit applications and make timely determinations, and also audit response actions to ensure that they are adequate. To provide resources for these activities, DEP has added specific permit and annual compliance fees to the Department's fee regulations. These regulations also establish money-back deadlines for permit reviews. *See the Department's Fee Regulations, 310 CMR 4.00, the Timely Action Schedule and Fees Provisions.*

